



U.S. Department of Justice

*United States Attorney  
Eastern District of New York*

271 Cadman Plaza East  
Brooklyn, New York 11201

November 17, 2011

**By Hand**

**SUBMITTED UNDER SEAL**

The Honorable Allyne R. Ross  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: United States v. David Aponte  
Criminal Docket No.04-842 (DGT)

Dear Judge Ross:

The government respectfully submits this letter to notify the Court that the above-captioned defendant has been arrested while on pre-trial release. This case was originally assigned to the Honorable David G. Trager and reassigned, after his death, to Your Honor. On October 13, 2004, Aponte pleaded guilty, pursuant to a cooperation agreement, to an information charging him with conspiring to damage and destroy, by means of an explosive and fire, the store known as "My Deli and Grocery" on Staten Island on December 22, 2001, in violation of Title 18, United States Code, Sections 371 and 844(I). At that time, Aponte was released on an unsecured personal recognizance bond and proactively cooperated with the government. Aponte is awaiting sentencing.

According to the redacted arrest report, which is attached to this letter, at approximately 5:10 p.m. on August 25, 2010, Aponte was arrested for, among other charges, aggravated sexual assault, by Hudson County New Jersey police officers. The arrest stemmed from Aponte's then-girlfriend's (identified as "Z.G." in the redacted arrest report and as "the girlfriend" or "the victim" herein) reporting to police officers that she had been attacked and raped by the man who was fleeing the scene in a Ford Escort with Texas license plates. The girlfriend had a bloody t-shirt, her face was swollen, she had a black eye, scratch marks on her hand and a red mark on the rear of her neck. On the basis of the girlfriend's description of the car and perpetrator, police were able to quickly apprehend Aponte.

The girlfriend was interviewed at greater length and explained, in substance, that Aponte had become irate and punched her in the face when she indicated she was thinking of leaving him. Aponte parked the car, entered her side of the car, struck her and told her that he was going to "fuck you one last time" and then grabbed a rusty pipe and threatened to hit her unless she gave him a blow job. He grabbed her by the back of her neck and forced his erect penis into her mouth. She refused to perform oral sex, at which point, he vaginally raped her. He then stole her earring and left her at the side of the road, where she was able to contact the police. The girlfriend later identified Aponte and his car for the police.

When officers stopped Aponte, based on the girlfriend's description of his car, they observed his t-shirt was bloody and that there was blood on the seatbelt of the front passenger seat. They also observed marijuana and Xanax in the car as well as the pipe the girlfriend alleged he had brandished. At some point, Aponte told the officers that he should have smoked the marijuana and that he was going to break up with his girlfriend first, but he "was hoping to fuck her one last time." Aponte was arrested and incarcerated on August 25, 2010.

In December 2010, Aponte was indicted for aggravated sexual assault, in violation of New Jersey Statute § 2C:14-2a, aggravated assault, in violation of New Jersey Statute § 2C:12-1b(2), possession of a weapon (pipe) with unlawful purpose, in violation of New Jersey Statute § 2C:39-4d, unlawful possession of a weapon, in violation of New Jersey Statute § 2C:39-5d, criminal restraint, in violation of New Jersey Statute § 2C:13-2b, robbery, in violation of New Jersey Statute § 2C:15-1, and possession of a controlled substance (Xanax), in violation of New Jersey Statute § 2C:35-10.5. The case is pending and currently has a January 2012 trial date. Aponte remains incarcerated. While Aponte's initial state defense attorney had made a motion seeking to have him transferred to a psychiatric facility to have him evaluated for competency, his new attorney has withdrawn that motion and noted during an October 21, 2011 status conference that Aponte has been able to meaningfully participate in his defense.

Because of the contents of this letter, including its discussion of information about the alleged victim, which under New Jersey law must remain confidential, see, e.g., N.J. Stat. Ann. §§ 2C:14-12(c), 2C:25-25(c) and 2C:25-33(a), and its discussion of Aponte's location, the government submits this letter under seal.

Respectfully submitted,

LORETTA E. LYNCH  
UNITED STATES ATTORNEY

By: \_\_\_\_\_/s/\_\_\_\_\_  
Amy Busa  
Assistant U.S. Attorney  
(718) 254-6274

Encl.

cc: Donna Newman, Esq.  
Senior U.S. Probation Officer Cheryl M. Fiorillo

## INCIDENT REPORT

DEPARTMENT BAYONNE POLICE DEPARTMENT		OFFICER 0901		PHONE NUMBER 201-359-8900		* UCR		31. FINGERPRINT CASE #		32. NCIC CODE 2010-57938	
1. LAW ENFORCEMENT (Domestic Violence)				3. INCIDENT DATE 2014-2A		4. COUNT 1		10. VICTIM (FIRST, MIDDLE, LAST) Z G			
AGGRAVATED SEXUAL ASSAULT				2012-1B		1		11. VICTIM SEX Female			
AGG ASSLT				2039-4D		1		12. VICTIM RACE White			
POSS WPN U-P/OTHERS WPN				2039-5D		1					
UNL POSS WPN/OTHER WPN											
DATE AND TIME 17:10		4		8/25/2010							
3. ADDRESS North St. and Linden Ave						30. EMPLOYER NAME ADDRESS Unemployed					
34. ARRESTED BY Bayonne		35. COUNTY Hudson		36. CITY 0901		37. P.O. Mark Fabbicatore 235		38. DATE 8/25/2010		39. TIME 17:10	
3. NAME OF VICTIM Street		3. WEAPON TYPE Rusty Pipe				3. ADDRESS 630 Avenue C, Bayonne NJ, 07002					
3. MEDIA DIFFUSION COLLECTION											
21. VEHICLE MAKE Escort		22. YEAR 1994		23. MAKE FORD		24. BODY TYPE 2 DR		25. COLOR BL		26. REGISTRATION NUMBER AND STATE BMR 521 TX	
27. SERIAL NUMBER OF IDENTIFICATION 1FARP11J8RW117776		28. VALUE \$0.00		29. STOLEN NO		30. TYPE GA#		31. TECHNICAL (EVIDENCE) Photos		32. TECHNICAL AND SERVICE P.O. J. Lewis B.P.D.	
33. TYPE OF INCIDENT Raid		34. YES OR NO Yes No		35. YES OR NO Yes No		36. YES OR NO Yes No		37. YES OR NO Yes No		38. YES OR NO Yes No	
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Additional Charges: Criminal Restraint 2C:13-1, Robbery 2C:12-1, Possession of Marijuana under 50 Grms 2C:35-10(A)4, Possession CDS (XANAX) 2C:35-10(A).

The following is a summation of events leading to the arrest of David Aponte aka David Costello. Sergeant Wolleon was on active patrol when a female, later identified as Z G, flagged down the Sergeants marked patrol unit at North Street and Linden Street. Ms. G, who was hysterical crying, pointed to a fleeing Ford Escort with Texas tags and stated that guy just raped me and beat me up. Sgt. Wolleon observed that Ms. G did have a swollen face and a black eye. Sergeant Wolleon then ordered Officer J. Lewis, who was in the immediate area, to stay with the victim so he could stop the aforementioned vehicle. Sergeant Wolleon had also radioed the information to headquarters.

Sergeant Wolleon, along with Officer Fabbicatore, initiated a motor vehicle stop at Avenue A and Linden Street of the suspect vehicle bearing Texas tags BMR 521. Immediately noticeable in the interior of the vehicle, specifically on the front driver's seat was a blood stained white T-Shirt. In addition to the blood stained T-Shirt, there was blood evidence on the front passenger side seat belt. The driver of the vehicle, later identified as David Aponte, was not able to produce personal identification or documentation for the vehicle.

3. NAME OF REPORTING OFFICER FABBRICATORE, MARK PO F235		4. PAGE 1 OF 3		5. REVIEWED BY SERAFINO, ANTHONY LT		6. INITIALS LTAS#59		7. SOURCE HQ	
8. NAME OF OFFICER ON SCENE LEWIS, JULIAN PO P215		9. OFFICER'S RANK WOLLEON, JOSEPH EGT. S45		10. ORIGINAL REPORT DATE 8/25/2010		11. ADJUSTMENT DATE		12. ADJUSTMENT REASON	
SIGNATURE <i>[Signature]</i>									

## CONTINUATION PAGE

1. AGENCY NAME BAYONNE POLICE DEPARTMENT	2. CASE NO. 0901	3. DATE & TIME 2011-05-08-0900	4. OFFICER [blank]	5. INCIDENT TYPE [blank]	6. DATE & TIME 2010-07-03-08
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While conducting an investigation into the incident at the motor vehicle stop, Officer Lewis was subsequently speaking with the victim at North Street and Linden Street. Ms. G stated that during a verbal argument inside the car with Aponte (known to the victim as Costello, with whom she has had a dating relationship for greater than six months) he became irate and punched her in the face because she was thinking of leaving him. Ms. G also stated to Officer Lewis that she wanted to break up with Aponte because of the increased incidents of violence against her that were unreported. Ms. G stated that she told Aponte her intent to break up with him and that's what made Aponte irate.

Aponte drove her to New Jersey, which the victim believes to be Bayonne, and into a parking lot for a train that has two tracks (Ms. G is not geographically familiar with the Bayonne outlay). While at the parking lot, Aponte exited his car from the driver's side and entered the passenger side of the vehicle. Aponte pushed G in the face, and stated "I'm gonna fuck you one more time." Aponte also grabbed a rusty pipe and held it to her face and said "First your gonna suck my dick" and proceeded to expose his erect penis. While grabbing the back of her neck, Aponte simultaneously forced his erect penis inside her mouth. After refusing to perform the oral sex act, Ms. G said Aponte became irate and began to remove her pants and panties. Ms. G stated that she was crying and pleading with Aponte to please stop and that she did not want to do this and she wanted to get out of the vehicle. With the pipe in his hand, Aponte then threatened Ms. G inside the car while holding the pipe to her face and grabbing the back of her neck. Aponte then forcefully spread her legs apart with his hand and began to forcefully penetrate her vagina with his erect penis causing her vagina to bleed.

After ejaculating inside her vagina, Aponte returned to the driver's side of the above vehicle and drove to North Street and Linden Street and told Ms. G "now get the fuck out of my car" and grabbed her earring from her purse and proceeded to push Ms. G out of the vehicle.

Ms. G then reported to Officer Lewis that there was a quantity of marijuana as well as some Xanax inside the vehicle. Ms. G also placed her hands inside the front of her pants and removed her hands showing Officer Lewis blood. Officer Lewis transported Ms. G to Ave A and Linden Street at Sgt Wolleon's request to positively identify the vehicle and Mr. Aponte. McCabes EMS was also called to respond to Linden Street and Avenue A.

At the motor vehicle stop, while Aponte was not in custody, Officer Fabbricatore had informed Mr. Aponte of his Miranda Rights and asked what was the origin of blood on the white shirt. Mr. Aponte had informed me that it was from having sex with his girlfriend. Officer Lewis transported the victim to the motor vehicle scene where she identified Aponte (again, known to her as Costello) as the person who sexually assaulted her. Officer Fabbricatore also observed facial injuries to Ms. G, specifically, a black and blue left eye, swollen jaw, scratch marks to her left hand and a red marking to the rear of her neck were noted by Officer Fabbricatore. At this point, Mr. Aponte was placed under arrest for domestic violence.

Sergeant Wolleon had notified Detective Caroselli and Officer Fabbricatore had notified Lieutenant Foy of the incident. Lieutenant Foy had subsequently contacted Sergeant Rosario of the Hudson County Prosecutor's SVU and informed her of the incident. Detective Rosario had assigned Detective Fernandez-Cruz to the case.

The white blood stained shirt observed in clear view was removed and placed into evidence. A pillow possibly stained with bodily fluids was removed from the vehicle and placed into evidence. Under the white blood stained shirt, Officer Lewis retrieved a clear plastic bag containing suspected marijuana. Under the authority of Sergeant Wolleon, the vehicle was impounded for being involved in the commission of a crime. A rusty metal rod (re-bar) was found in plain view on the floor behind the driver's side seat, which was identified by Ms. G as being in possession of Aponte during the incident. The rod was retrieved and placed into evidence. A P&E was submitted on the rod. Next to the metal rod was a black mens dress shoe. Protruding from that shoe was a clear plastic bag containing 5 (five) full tablets and 1 (one) partial tablet. These pills were retrieved and later identified by a 2009 PDR as CDS Xanax. A small gold earring was also recovered on the rear floor behind the drivers seat. The earring was identified by Ms. G as the earring removed by Aponte prior to her being pushed out of the vehicle. A P&E was submitted for the earring.

Mr. Aponte was transported to Bayonne Headquarters by P.O. Fabbricatore. During the transport, Aponte, without being questioned, stated "I was gonna break up with her first, I just wanted to fuck her one last time." In addition to that spontaneous statement, Mr. Aponte also stated "I guess I'm gonna get charged with the weed, but I'll be honest, I should have smoked that shit first."

7. OFFICER NAME FABBRICATORE, MARK PO P235	8. PAGE 2 OF 3	9. REVIEWER SERAFINO, ANTHONY LT.	10. INITIALS LT.43-39	11. SOURCE HQ
12. OFFICER NAME LEWIS, JULIAN PO P215	13. OFFICER NAME WOLLEON, JOSEPH SGT. S45	14. Original Report Date 8/25/2010	15. Adjustment Date	



CONTINUATION PAGE

REPORTING OFFICER BAYONNE POLICE DEPARTMENT	REPORTING OFFICER 0901	REPORTING OFFICER 201-858-6900	REPORTING OFFICER 2010-57938
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McCabe's Ambulance transported the victim to Christ Hospital in Jersey City. Officer Zimny accompanied the victim during the transport. At 18:20 Detective Fernandez-Cruz had arrived at Christ Hospital with SANE Nurse Fardogi. Ms. G was treated by SANE Nurse Fardogi and Dr. Herschel Kupfer of Christ Hospital. After being treated at Christ Hospital Ms. G was transported back to police headquarters by Sgt. Wolleon and P.O. Zimny #244.

The white blood stained T-Shirt was placed into the evidence drying locker in Police headquarters. The locker was marked clean, the shirt was tagged and placed on a plastic hanger and then sealed with the red tie which was initiated by P.O. Fabbriatore 235. The CDS Xanax was placed into evidence bag 101822931 and a P&E was submitted. The CDS marijuana was placed into evidence bag 101822932 and a P&E was submitted. The clothes worn by Mr. Aponte were removed from his person and placed into evidence. It should be noted that on Mr. Aponte's pants zipper was a long blonde hair clearly visible on the zipper. A P&E was submitted on the clothing. It should be noted that Mr. Aponte removed his clothing in Cell B away from view of any uniformed officer. Mr. Aponte was given a sterile hospital surgical scrub suit for clothing.

Officer Lewis used BCI Camera #3 and photographed the injuries to Ms. G and the suspect vehicle using image device card D5. A total of 39 digital images were shot.

At police headquarters, a Live Scan confirmed David Costello's identity as David Aponte. A check for warrants revealed the following warrant's.

Warrant SPZ-745111 issued 09/19/2001 for \$200.00 (FL) by the Honorable James R. Birchmeir of the Dennis Twp. Municipal Court.

Warrant SPZ-781816 issued 09/13/2001 for \$500.00 (FL) by the Honorable Damian G. Murray of the Eagleswood Twp Municipal Court. Mr. Aponte was additionally processed on the open warrants.

On behalf of Ms. G a T.R.O. was applied for and granted by the Honorable Frank T. Carpenter III of the Bayonne Municipal Court. After taking testimony from P.O. Fabbriatore, and reviewing the IR via telephone, Judge Carpenter found probable cause on all the charges. Ms. G did not wish to speak to a D.V.R.T. member at this time. A check of the central registry shows no active orders of protection for either party.

SVU had determined that they will review this matter on a later date and that the investigation can remain with the Bayonne Police Department under the Domestic Violence guidelines.

Mr. Aponte was issued Summons 053132 for CDS in a Motor Vehicle in violation of 39:4-49.1, Summons 053133 for Failure to Produce Registration 39:3-29(b) Summons 053134 for Failure to Produce Insurance 39:3-29(c).

The vehicle was impounded for being used in the commission of a crime. The vehicle was towed via Advanced to the Bayonne Central Garage on Hook Road. Sergeant Wolleon authorized the impound. Sergeant Wolleon was on scene during the entire incident.

Captain Haima and Chief Kubert were notified by Lieutenant Foy.

INVESTIGATING OFFICER FABBRICATORE, MARK PO P235 LEWIS, JULIAN PO P215	INVESTIGATING OFFICER 3 OF 3	INVESTIGATING OFFICER SERAFINO, ANTHONY LT.	INVESTIGATING OFFICER LPI#39	INVESTIGATING OFFICER HQ
INVESTIGATING OFFICER ON SCENE WOLLEON, JOSEPH SGT. S45		Original Report Date 8/25/2010	Adjustment Review	
SIGNATURE <i>[Signature]</i>		Adjustment Date		